

Applicable commitment period
Effective date of the plan
Form B22C
Household
11 U.S.C. § 1325(a) (4)
11 U.S.C. § 1325(b) (1)
11 U.S.C. § 1325(b) (4)

Jesse Robert Fleishman and Ivonne Raquel Fleishman
Case No. 07-30315-rld13

7/9/2007

RLD

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Chapter 13 debtors included their unborn second child ("Second Child") as a member of their household for purposes of calculating the "applicable commitment period" for plan payments in their Form B22C. The trustee objected.

The court sustained the trustee's objection, finding that Congress did not intend to include unborn children as part of households in determination of the "applicable commitment period" under § 1325(b) (4) of the Bankruptcy Code. However, a plan is not binding on debtors and their creditors until it is confirmed. In addition, the Form B22C can be amended postpetition. Further, the court interpreted "effective date of the plan" for § 1325(b) (1) purposes to be the date the plan is confirmed. Accordingly, debtors were not precluded from including the Second Child in an amended Form B22C once the Second Child was born, and for the "applicable commitment period" to be based on that amended Form B22C, so long as the Second Child was born prior to confirmation of debtors' plan.

P07-9(19)

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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In Re:) Bankruptcy Case
12 JESSE ROBERT FLEISHMAN and IVONNE) No. 07-30315-rld13
13 RAQUEL FLEISHMAN,) MEMORANDUM OPINION
14 Debtors.)

15 In this case, the parties seek a determination as to whether
16 the debtors' unborn child is a member of their household. Resolution of
17 this issue bears directly on the duration of the debtors' plan in chapter
18 13, as the size of their household in relation to their combined income
19 determines whether the debtors' family income is above or below the
20 median for purposes of establishing the "applicable commitment period"
21 for plan payments under the Bankruptcy Code. I conclude: (1) for
22 purposes of calculating the "applicable commitment period," the debtors'
23 household does not include unborn children, and (2) the "applicable
24 commitment period" is determined as of the plan confirmation date. My
25 reasons follow.

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1 forth on their B22C, is \$61,945.00. If the Debtors' unborn child is not
2 included as a member of their household, the household size is three, for
3 which the Oregon median income is \$55,104.00. If their unborn child is
4 considered a member of their household, the household size is four, for
5 which the Oregon median income is \$63,946.00.

6 After briefing by the parties, the matter was heard on June 7,
7 2007. At the hearing, I listened to argument and took the matter under
8 advisement.

9 Jurisdiction

10 I have jurisdiction to consider and rule on the Trustee's
11 objections to the Plan as "core" matters under 28 U.S.C. §§ 1334 and
12 157(b) (2) (L).

13 Issues

14 Whether an unborn child is a member of the Debtors' household
15 for purposes of determining the applicable median family income in
16 calculating the "applicable commitment period."

17 Whether household size is determined as of the petition date,
18 as of the date of confirmation of a chapter 13 plan, or on some other
19 date(s) for purposes of determining the "applicable commitment period."

20 Discussion

21 Deciding the issues before me requires consideration and
22 interpretation of provisions of a number of sections of the Bankruptcy
23 Code. In this context, it is important at the outset to state what I am
24 not determining in this case. At oral argument, I specifically asked
25 counsel for both parties if they were looking for a decision on the
26 impact of the Debtors' impending blessed event on their "projected

1 disposable income," for § 1325(b)(1)(B) purposes. Both parties stated
2 that "projected disposable income" was not a matter in dispute, at least
3 at the time of the hearing. Accordingly, I leave that issue for another
4 day, although the case clearly is pregnant with it.

5 The issue that I must decide is the appropriate applicable
6 commitment period for the Plan. The term "applicable commitment period"
7 is introduced in § 1325(b)(1), which provides in relevant part

8 If the trustee or the holder of an allowed unsecured
9 claim objects to the confirmation of the plan, then
10 the court may not approve the plan unless, as of the
11 effective date of the plan-

12 (B) the plan provides that all of the
13 debtor's projected disposable income to be
14 received in the applicable commitment
15 period beginning on the date that the first
16 payment is due under the plan will be
17 applied to make payments to unsecured
18 creditors under the plan.

19 (Emphasis added.)

20 "Applicable commitment period" is defined in § 1325(b)(4).

21 For purposes of this subsection, the 'applicable
22 commitment period'--

23 (A) subject to subparagraph (B), shall be-

24 (i) 3 years; or
25 (ii) not less than 5 years, if the
26 current monthly income of the
debtor and the debtor's spouse
combined, when multiplied by 12, is
not less than-

(I) in the case of a debtor in a
household of 1 person, the median
family income of the applicable
State for 1 earner;

(II) in the case of a debtor in
a household of 2, 3, or 4
individuals, the highest median
family income of the applicable
State for a family of the same

1 number or fewer individuals; or
2 (III) in the case of a debtor in
3 a household exceeding 4
4 individuals, the highest median
5 family income of the applicable
6 State for a family of 4 or fewer
7 individuals, plus \$525 per month
8 for each individual in excess of 4;
9 and

10 (B) may be less than 3 or 5 years,
11 whichever is applicable under subparagraph
12 (A), but only if the plan provides for
13 payment in full of all allowed unsecured
14 claims over a shorter period.²

15 The terms "household," "person" and "individuals" used in § 1325(b)(4)
16 are not defined in the Bankruptcy Code. Nor is the BAPCPA legislative
17 history helpful in divining how those terms are to be interpreted.

18 Consistent with the preamble to § 1325(b)(1), issues as to the
19 appropriate "applicable commitment period" arguably only would arise in
20 situations where the chapter 13 trustee or an unsecured creditor objects
21 to confirmation of the debtor's chapter 13 plan. In this case, of
22 course, the Trustee has objected. However, under the current Federal
23 Rules of Bankruptcy Procedure, all chapter 13 debtors are required to
24 calculate the "applicable commitment period" for their cases and file a
25 document including such calculation on or about the time of filing. See
26 Fed. R. Bankr. P. 1007(c). Interim Rule 1007(b)(6) specifically
27 provides:

28 A debtor in a chapter 13 case shall file a statement
29 of current monthly income, prepared as prescribed by
30 the appropriate Official Form, and, if the debtor has
31 current monthly income greater than the median family
32 income for the applicable state and family size, a

33 ² The Plan does not provide for full payment of the allowed claims
34 of general unsecured creditors; so, § 1325(b)(4)(B) does not apply.

1 calculation of disposable income in accordance with
2 § 1325(b)(3), prepared as prescribed by the
appropriate Official Form.

3 The relevant Official Form is the B22C, which requires in Part
4 II, Section 16, entitled "Applicable Median Family Income," that the
5 debtor

6 [e]nter the median family income for applicable state
7 and household size. (This information is available by
8 family size at www.usdoj.gov/ust/ [the "U.S. Trustee
Web Site"] or from the clerk of the bankruptcy court.)

9 The U.S. Trustee Web Site advises that the information
10 applicable for completing Part II of the B22C "is published by the Census
11 Bureau according to State and family size and is adjusted each year." In
12 fact, "median family income" generally is defined in § 101(39A), added in
13 BAPCPA, as follows:

14 The term "median family income" means for any year -
15 (A) the median family income both calculated and
16 reported by the Bureau of the Census in the then
most recent year. . . .

17 A. A household consists of persons living outside the womb.

18 The U.S. Census Bureau ("Census Bureau") defines "household" as
19 follows:

20 A household includes all the persons who occupy a
21 housing unit. A housing unit is a house, an
22 apartment, a mobile home, a group of rooms, or a
single room that is occupied (or if vacant, is
23 intended for occupancy) as separate living quarters.
Separate living quarters are those in which the
24 occupants live and eat separately from any other
persons in the building and which have direct access
25 from the outside of the building or through a common
hall. The occupants may be a single family, one
26 person living alone, two or more families living
together, or any other group of related or unrelated
persons who share living arrangements. (People not

1 living in households are classified as living in group
2 quarters.)

3 House[h]olds with Individuals under 18 years include[]
4 not only families with related children but also all
other households in which a person under 18 is
present. . . .

5 The Census Bureau does not define the terms "person" or "individuals."
6 However, consistent with the Census Bureau's functions to gather
7 information from individuals and establishments from which to compile
8 statistics,³ it makes no sense to interpret "person" or "individual" as
9 including unborn children for purposes of determining how many "persons"
10 occupy a housing unit. For example, some pregnancies terminate before a
11 child is born. Counting such pregnancies as "persons" automatically
12 would build inaccuracies into the statistics the Census Bureau is charged
13 with compiling as accurately as possible.

14 Interpreting "households" as not including unborn children is
15 consistent with other authorities under federal law. In computing
16 personal exemption deductions under federal tax law, courts have held
17 that unborn children are not "persons" or "individuals" for exemption
18 purposes. See Wilson v. Comm'r, 41 B.T.A. 456 (Bd. of Tax Appeals 1940):

19 The word 'person' as used in section 25(b)(2) is to be
20 taken in its normal, everyday sense of a living human
being, a man, woman, or child, an individual. . . .
21 The interpretation which petitioners suggest is so
obviously strained as to merit little
22 discussion. . . . Nor is the fact that, by common law
and generally by statute, a child en ventre sa mere is
23 deemed to be in esse for the purpose of inheritance

24 ³ Congress created the Census Bureau as a permanent agency of the
25 Department of Commerce in 1902. The Census Bureau takes a census of
26 population every 10 years, but also conducts statistical studies of
economic activity and state and local government every five years. Each
year, the Census Bureau also conducts more than 100 other surveys.

1 for its own benefit persuasive here. The credit here
2 claimed is not for the benefit of the child but of the
3 parents.

4 The decision of the Court of Claims in Cassman v. U.S., 31 Fed.
5 Cl. 121 (1994), is particularly useful by analogy in analyzing the issues
6 before me. In Cassman, the taxpayer claimants sought a tax refund based
7 on a claimed dependent exemption for a child that was not born as of the
8 end of the subject tax year. The Court of Claims rejected the taxpayers'
9 claim. Relevant to the argument that the Debtors' unborn child should be
10 considered as a member of the Debtors' household, the Court of Claims
11 considered and rejected the taxpayers' argument that their unborn child
12 should be considered a "resident" of the United States.

13 Plaintiffs argue that Jonathan Cassman was a resident
14 of the United States prior to his birth because his
15 mother was a resident, and they ask the court to take
16 judicial notice of the fact that it would have been
17 physically impossible for the mother to be a resident
18 and her unborn child not to be a resident. This
19 argument is without merit. The court cannot justify
20 viewing an unborn child as "residing" anywhere. . . .

21 Id. at 126.

22 With respect to the administrative difficulties created by
23 recognizing unborn children as "persons" where a live birth ultimately
24 does not result, the Cassman court stated the following:

25 [D]efendant argues, to allow a deduction based on
26 conception, rather than live birth, would create
confusion because of the uncertainty regarding the
date when a particular conception occurs....The court
agrees with defendant. In doing so, the court is
concerned with the potential for increased
administrative burdens both on the I.R.S. and on the
taxpayers. A live birth, by operation of state and
local law, results in the issuance of a birth
certificate, which is a universally accepted and

1 administratively efficient document of
2 identification. . . . The birth certificate itself
3 demonstrates that plaintiffs have a son. If the court
4 held, as plaintiffs urge, that the dependent exemption
5 was available as of the date of conception, then the
6 exemption would be available for pregnancies that
7 never resulted in live births and the issuance of a
8 birth certificate, including those pregnancies ending
9 in miscarriages, induced abortions, and stillbirths.
10 In the absence of any clear evidence of congressional
11 intent to do otherwise, the court must spare taxpayers
12 and the I.R.S. the administrative burden of
13 establishing that such pregnancies occurred or did not
14 occur.

15 Id. at 129. There is no intent of Congress reflected either in the
16 language of the Bankruptcy Code, as amended by BAPCPA, or in its
17 legislative history to include unborn children when the terms
18 "household," "person" or "individuals" are used in the definition of
19 "applicable commitment period."

20 Finally, in Cassman, the court noted that there was nothing in
21 or about the subject statutory provisions that indicated that the terms
22 "person" or "individual" were to be understood outside of common language
23 use.

24 The operative word in § 152(a) in the 1954 Code and
25 the 1986 Code is "individual." In its everyday sense,
26 however, the term is synonymous with "person," the
latter term being distinguishable only when applied to
entities other than natural persons. Certainly,
Congress did not intend to change the meaning of the
provision when it substituted the word "individual"
for "person." The Supreme Court, in considering the
rights of the unborn under the Fourteenth Amendment to
the Constitution, observed, after reviewing a broad
range of common and statutory laws, that "the unborn
have never been recognized as persons in the whole
sense." Roe v. Wade, 410 U.S. 113, 162, 93 S. Ct.
705, 731, 35 L.Ed.2d 147 (1973).

27 Id. at 124 n.3. The same can be said with regard to the use of "person"

1 and "individuals" in § 1325(b) (4).

2 As noted in Cassman, in Roe v. Wade, the Supreme Court did not
3 recognize unborn children as having general constitutional rights as
4 "persons."

5 In areas other than criminal abortion, the law has
6 been reluctant to endorse any theory that life, as we
7 recognize it, begins before live birth or to accord
8 legal rights to the unborn except in narrowly defined
situations and except where the rights are contingent
upon live birth.

9 Roe v. Wade, 410 U.S. at 161. In its most recent decision in the
10 abortion area, the Supreme Court has not altered that fundamental
11 position. See Gonzales v. Carhart, 127 S.Ct. 1610 (2007).

12 The Debtors have cited a number of cases in the student loan
13 discharge area in support of their argument that the Debtors' unborn
14 child should be considered as a part of their household. These cases
15 generally deal with concerns as to the subject debtors' future prospects
16 to make payments on their student loan debts over time. Accordingly,
17 they are much more relevant to the issue of the Debtors' projected
18 disposable income over the life of the Plan than to a determination of
19 the appropriate "applicable commitment period." See, e.g., Ordaz v.
20 Illinois Student Assistance Comm'n (In re Ordaz), 287 B.R. 912, 920
21 (Bankr. C.D. Ill. 2002) ("With the birth of her second child, [the
22 debtor's] circumstances are not likely to improve any time soon."); Nary
23 v. The Complete Source, et al. (In re Nary), 253 B.R. 752, 761 n.22 (N.D.
24 Tex. 2000) ("The bankruptcy court treated the Narys as a family of five
25 because they were expecting the birth of a child in June 2000 and any
26 attempted realistic payment of the debts at issue would necessarily be on

1 a long range basis."); Williams v. Missouri Southern State College, et
2 al. (In re Williams), 233 B.R. 423, 429-30 (Bankr. W.D. Mo. 1999); and
3 Kincaid v. ITT Educational Serv., Inc. (In re Kincaid), 70 B.R. 188, 190
4 (Bankr. W.D. Mo. 1986) ("[T]his is one of those rare and unusual cases in
5 which the debtors do not have the current ability to pay and in which the
6 future employment prospects are not promising and their economic future
7 is further clouded by the forthcoming birth of a child.").

8 Likewise, the cases cited by the Debtors concerning issues of
9 alleged substantial abuse in chapter 7 appear relevant to questions as to
10 the Debtors' projected disposable income rather than to the "applicable
11 commitment period" under the Plan. See, e.g., In re Ryan, 267 B.R. 635,
12 637 (Bankr. N.D. Iowa 2001) ("[T]he U.S. Trustee declined to pursue a
13 motion to dismiss under § 707(b) primarily based on Debtor's pregnancy
14 and marital status. She is single, has a 12-year old child and is
15 expecting a child. Mr. Schmillen points out the cost of day care alone
16 will consume much of Debtor's future disposable income."); and In re
17 Edwards, 50 B.R. 933, 940 (Bankr. S.D.N.Y. 1985) ("In view of the
18 impending loss of a second income, it is apparent that projections of
19 future ability to pay based on the present two-income status are
20 inappropriate. Further it can be anticipated that there will be new
21 expenses associated with the anticipated baby."). In any event, in a
22 recent post-BAPCPA decision, in determining whether to dismiss the
23 debtor's chapter 7 case as an abuse under the amended version of
24 § 707(b), the bankruptcy court held that the debtor could not include her
25 unborn child as a member of her household. See In re Pampas, 2007 WL
26 1485352 (Bankr. M.D. La. May 21, 2007).

1 Finally, the Debtors have attached as exhibits to their
2 supporting memorandum references from a number of federal and state
3 programs that specifically include unborn children in determining program
4 eligibility. See Memo in Support of Debtors' Response to Trustee's
5 Objection to Confirmation, Exhibits 1-7. While interesting, these
6 exhibits are no more than consistent with the Supreme Court's
7 determination that legal rights are not accorded with respect to unborn
8 children "except in narrowly defined situations." Roe v. Wade, 410 U.S.
9 at 161. In fact, the exhibit examples highlight, in contrast, that there
10 is nothing in the Bankruptcy Code that specifically recognizes unborn
11 children as "persons" or "individuals" or as members of "households" or
12 suggests that Congress intended to include unborn children for
13 consideration in determining debtors' "applicable commitment periods."
14 In the absence of such specific inclusion, I find that under
15 § 1325(b)(4), in defining "applicable commitment period," Congress
16 considered households of living persons only, not including unborn
17 children.

18
19 B. The "effective date of the plan" under § 1325(b)(1) is the plan
20 confirmation date.

21 As noted above, under § 1325(b)(1), the "applicable commitment
22 period" is determined "as of the effective date of the plan." Although
23 the term "effective date of the plan" is used in a number of Bankruptcy
24 Code provisions (see, e.g., §§ 1225(a)(4), 1225(a)(5)(B)(ii), 1325(a)(4),
25 1325(a)(5)(B)(ii) and 1325(b)(1)), it is not defined in the Bankruptcy
26 Code, and the legislative history of the Bankruptcy Code is not helpful

1 in shedding much light on the intent of Congress in using the term in its
2 multiple settings.

3 In these circumstances, it perhaps is not surprising that
4 courts have come to very different conclusions as to the meaning of the
5 "effective date of the plan" in different contexts. Section 1325(a)(4),
6 which sets the "best-interests-of-creditors" test for payments to
7 unsecured creditors in order to confirm a plan in chapter 13, provides:

8 [T]he value, as of the effective date of the plan, of
9 property to be distributed under the plan on account
10 of each allowed unsecured claim is not less than the
11 amount that would be paid on such claim if the estate
of the debtor were liquidated under chapter 7 of this
title on such date. . . .

12 Most courts deciding "best-interests-of-creditors" test issues in chapter
13 13 have considered a hypothetical liquidation of the debtor's assets in
14 chapter 7 as of the petition date, and consequently have determined that
15 for purposes of § 1325(a)(4), the petition date, in effect, is the
16 "effective date of the plan.". See K.M. Lundin, Chapter 13 Bankruptcy
17 Vol. 2, § 160.1 at p. 160-1 (3d ed. 2000 & Supp. 2004). The rationale
18 for these decisions is that the rights of creditors with respect to
19 assets of the debtor, including applicable exemptions and potential
20 preference and avoidance recoveries, are determined as of the petition
21 date. See, e.g., Hollytex Carpet Mills v. Tedford, 691 F.2d 392 (8th
22 Cir. 1982); In re Green, 169 B.R. 480, 482 (Bankr. S.D. Ga. 1994); and In
23 re Statmore, 22 B.R. 37 (Bankr. D. Neb. 1982). But see Education
24 Assistance Corp. v. Zellner, 827 F.2d 1222, 1225 (8th Cir. 1987) (Quoting
25 Collier's, "[t]he date of the valuation of the property to be distributed
26 under the plan, as well as the date as of which the conceptualized

1 chapter 7 liquidation is to have taken place, are one and the same; both
2 relate to the effective date of the plan. . . . Of course, the effective
3 date of the plan cannot be antecedent to the confirmation hearing at
4 which the issues raised by section 1325(a)(4) are to be heard by the
5 court.”).

6 The language of § 1225(a)(4), which establishes the “best-
7 interests-of-creditors” test in chapter 12, is identical to the language
8 of § 1325(a)(4). However, most courts deciding “best-interests-of-
9 creditors” test issues in chapter 12, in contrast, have applied the
10 chapter 7 hypothetical liquidation test as of the plan confirmation date.
11 The reasoning of these decisions is based on the courts’ conclusions that
12 applying the “best-interests-of-creditors” test on the date when the
13 chapter 12 plan is binding on the debtor and creditors is consistent with
14 the language of the Bankruptcy Code and properly serves the purpose of
15 chapter 12 to insure that creditors receive a “fair” deal under the
16 debtor’s plan.

17 The nature of a Chapter 12 reorganization is a debt
18 extension proceeding, not debt extinction. This debt
19 extension process requires a departure from the
20 approach generally applicable in chapter 7 proceedings
21 that property of the estate be determined as of
22 commencement of the case. Instead, property of the
23 estate for Chapter 12 purposes includes property
24 interests of the debtor during the pendency of the
entire case, as well as property rights acquired by
the Chapter 12 estate after the commencement of the
case. Accordingly, the Section 1207 definition of
property of the estate incorporates and expands upon
the definition of property of the estate found in
Section 541.

25 In re Bremer, 104 B.R. 999, 1007 (Bankr. W.D. Mo. 1989). Also see, e.g.,
26 In re Przybylski, 340 B.R. 624, 627 n.1 (Bankr. E.D. Wis. 2006); In re

1 Novak, 252 B.R. 487, 491 (Bankr. D.N. Dak. 2000); First Nat'l Bank v.
2 Hopwood (In re Hopwood), 124 B.R. 82, 85 (Bankr. E.D. Mo. 1991); In re
3 Foos, 121 B.R. 778, 783 (Bankr. S.D. Ohio (1990); In re Luchenbill, 112
4 B.R. 204, 216 (Bankr. E.D. Mich. 1990); and In re Bluridg Farms, Inc., 93
5 B.R. 648, 653 (Bankr. S.D. Iowa 1988). But see In re Nielsen, 86 B.R.
6 177, 178 (Bankr. E.D. Mo. 1988), applying the majority approach to
7 interpreting § 1325(a)(4) to interpretation of § 1225(a)(4):

8 It should be noted that the wording of Section 1225
9 and Section 1325 is identical. In interpreting the
10 provisions of Chapter 12, courts have often turned to
11 Chapter 13 for guidance because Chapter 12 was closely
12 modeled after the existing Chapter 13 with alterations
13 of provisions that are inappropriate for family
14 farmers. In re Kjerulf, 82 B.R. 123 (Bankr. D. Ore.
15 1987).

16 Courts generally have been resistant to the idea that the term
17 "effective date of the plan" can be applied to a postconfirmation plan
18 modification. See, e.g., Forbes v. Forbes (In re Forbes), 215 B.R. 183,
19 189-90 (8th Cir. BAP 1997), and cases cited therein.

20 [T]he effective date of the plan is neither determined
21 nor redetermined at the point of postconfirmation
22 modification....[T]here is only one plan to which the
23 Code refers. Regarding the effective date of the
24 plan, there is only one plan. The effective date is
25 not altered by modification of the plan, for the
26 modified plan remains, ever constant, the plan.

27 In In re Allen, 240 B.R. 231 (Bankr. W.D. Va. 1999), faced with
28 separate issues regarding valuation of collateral and determining the
29 appropriate discount factor to apply with respect to a secured creditor's
30 allowed claim under § 1325(a)(5), the bankruptcy court came in effect to
31 two different conclusions as to the application of the "effective date of
32 the plan." Echoing the majority § 1325(a)(4) view, the court determined

1 that it was appropriate to value secured creditor collateral as of the
2 petition date because, among other reasons, "the filing date is the one
3 which alters the rights otherwise possessed by the secured creditor under
4 its documentation and state law to repossess the collateral, liquidate it
5 and apply the sale proceeds to the debt." Id. at 237. However, the
6 court considered the "key factors" in its present value determination to
7 be "the amount, if any, to be distributed immediately upon confirmation,
8 the amount and timing of any payments to be made over a period of time,
9 and the applicable interest rate necessary to establish appropriate
10 present value of those payments." Id. at 237. In light of these
11 considerations, the bankruptcy court held that the "effective date of
12 the plan" meant the final hearing date for plan confirmation "because
13 that is the date on which the most currently valid information will be
14 available to the parties and the Court to determine the present value of
15 the payment, payments and/or stream of payments to be made by the Debtor
16 or the Trustee to the creditor in satisfaction of its interest." Id. at
17 238. See also In re Milleson, 83 B.R. 696, 699 (Bankr. D. Neb. 1988).
18 In coming to its conclusions, the court in Allen made the following,
19 common sense observations:

20 Because [in using the term "effective date of the
21 plan"] the drafters of the Code could easily have
22 designated something quite specific such as the date
23 of filing or the date of confirmation, it may be that
the term was intended to be a phrase of art to be
determined on a case-by-case basis depending upon each
case's particular circumstances.

24 In re Allen, 240 B.R. at 236.

25 Post-BAPCPA, at least one court has determined that a debtor's
26 household size for "applicable commitment period" purposes is to be

1 determined at the plan confirmation date, as the "effective date of the
2 plan." In re Anderson, 2007 WL 1112925 (Bankr. D. Kan. April 13, 2007).
3 While the bankruptcy court in Anderson relied on prior authority within
4 its district for that conclusion, without analysis, it does provide some
5 useful suggestions for deciding how the term "effective date of the plan"
6 in relation to "applicable commitment period" in § 1325(b)(1) should be
7 interpreted.

8 Under BAPCPA, current monthly income cannot be amended
9 during the case because it is based on concrete
10 historical data. No such restriction exists in the
Code regarding household size.

11 Id.

12 Fed. R. Bankr. P. 1009(a) allows a debtor to amend the
13 petition, schedules and statements filed with the court "as a matter of
14 course at any time before the case is closed." The rule does not
15 restrict the right to amend the B22C. Absent bad faith, such amendments
16 are to be liberally allowed. See Arnold v. Gill (In re Arnold), 252 B.R.
17 778, 784 (9th Cir. BAP 2000).

18 In interpreting the term "effective date of the plan" in
19 § 1325(b)(1), in the absence of a definition provided by Congress, either
20 in the Bankruptcy Code itself or in its legislative history, it is
21 appropriate to apply a logical meaning to the term based on common
22 language usage.

23 When interpreting an undefined term appearing in a
24 statute, a court first looks to the plain meaning of
the words used. When further guidance as to the
25 meaning of a word is needed, the court may then
consult the legislative history of the statute. When
26 the legislative history does not reveal the
appropriate meaning, it is helpful to resort to

1 dictionaries and apply the common meaning of the term.

2 Cassman v. U.S., 31 F.2d at 125.

3 "Effective" in common parlance means "ready for
4 service or action; to effect." "Effect" in turn means
5 "a quality or state of being operative." Webster's
6 New Collegiate Dictionary (1975). Both logically and
7 by definition, the effective date of a plan cannot
8 exist before the date the plan is filed. In other
9 words, a plan cannot be "ready for action" or
10 "operative" before its exists.

11 In re Musil, 99 B.R. 448, 450 (Bankr. D. Kan. 1988).

12 A chapter 13 plan generally is filed early in a chapter 13
13 case, but it further does not bind the debtor or other interested parties
14 until it is confirmed. Section 1327(a) specifically provides that:

15 The provisions of a confirmed plan bind the debtor and
16 each creditor, whether or not the claim of such
17 creditor is provided for by the plan, and whether or
18 not such creditor has objected to, has accepted, or
19 has rejected the plan.

20 Since the plan is not binding on the debtor and creditors in
21 chapter 13 until it is confirmed, and a debtor may amend the B22C freely
22 to recalculate the "applicable commitment period" as appropriate
23 postpetition, I find that it is most logical to interpret the term
24 "effective date of the plan," as it is used in § 1325(b)(1), to mean the
25 date that the plan is confirmed.⁴ To interpret "effective date of the
26 plan" otherwise in this context would give the plan "effect" before it
27 finally is approved as a binding covenant between debtors and their
28 creditors.

29 ⁴ In this Memorandum Opinion, I do not address the meaning of the
30 "effective date of the plan" with respect to any other section of the
31 Bankruptcy Code where that term is used.

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